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VINCENT FERRANTI

11
12 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

13 VINCENT FERRANTI, individually
14 and on behalf of a class of similarly
15 situated individuals,

16 Plaintiff,

17 v.

18 HEWLETT-PACKARD COMPANY;

19 Defendant.

Case Number: 13-cv-3847

CLASS ACTION COMPLAINT

- 20 (1) **Violations of California**
21 **Consumer Legal Remedies Act**
- 22 (2) **Violations of the Unfair**
23 **Competition Law**
- 24 (3) **Breach of Written Warranty**
25 **Under the Magnuson-Moss**
26 **Warranty Act, 15 U.S.C. §**
27 **2301 et seq.**
- 28 (4) **Breach of Express Warranty**

1 Plaintiff Vincent Ferranti files his Original Class Action Complaint against
2 Defendant Hewlett-Packard Company (“HP” or “Defendant”) and alleges as
3 follows. All allegations are based on Ferranti’s personal knowledge as to matters
4 involving him and on information and belief based on, among other things, the
5 investigation of his attorneys, as to all other matters.

6 **INTRODUCTION**

7
8 1. Vincent Ferranti (“Ferranti” or “Plaintiff”) brings this action
9 individually and on behalf of all similarly situated persons (the “Class Members”)
10 who purchased or leased a Hewlett Packard Officejet Pro 8500 or 8600 Wireless
11 All-in-one printer (the “HP Printers”). The HP Printers have an undisclosed design
12 and/or manufacturing defect that causes the wireless function to sporadically cease
13 operating with normal use (the “Defect”).

14 2. Wireless printers are becoming increasingly popular for use in
15 businesses and the home. The majority of these printers use WiFi, also known as
16 the 802.11 set of standards, and communicate with computers via radio signals.
17 Wireless printers are able to work wirelessly (meaning without plugging them into
18 a computer) via WiFi transceivers built into them. Once the wireless printer is set
19 up to communicate wirelessly with a laptop, desktop or tablet computer, compatible
20 devices can send print jobs to the printer.

21 3. This comes in handy for offices or households with multiple
22 computers because there is no need to buy a dedicated printer for each computer
23 since multiple computers can access the same wireless printer. Additionally,
24 laptops or tablets can be used throughout the range of the wireless signal, and the
25 user can print documents without having to plug the laptop or tablet into the printer
26 every time he wants to print.

27 4. The HP Printers at issue in this litigation are defective in that they
28 contain improperly designed and/or manufactured transceivers which are unable to

1 maintain consistent communication with the computers they are linked to. Because
2 of this Defect in the design and/or manufacture of the HP Printers' transceivers, the
3 HP Printers will cease operating with normal use.

4 5. The HP Printers all have the same defective transceiver. This common
5 Defect causes the printers to be unable to consistently communicate with the user's
6 laptop desktop or tablet computer, thus precluding the user from being able to print
7 documents wirelessly (i.e., without plugging the printer into his computer). The HP
8 Printers' wireless connectivity intermittently stops working for no reason.

9 6. HP designed, manufactured, distributed, marketed, sold and/or leased
10 the HP Printers to Ferranti and the Class Members.

11 7. Beginning in April 2009, if not before, HP knew or should have
12 known that the HP Printers suffered from the Defect. HP nevertheless actively
13 concealed the Defect from and failed to disclose the Defect to Ferranti and the
14 Class Members at the time of purchase or lease and thereafter. HP has continued to
15 sell the HP Printers without warning consumers that the wireless function will cease
16 operating with normal use.

17 8. Although the Defect manifests itself during the warranty period and is
18 covered by HP's warranty, HP has refused to repair the HP Printers under warranty.
19 Rather than providing a proper repair during the warranty, HP has offered various
20 "work-arounds" which do not fix the defect.

21 9. Had Ferranti and the Class Members known about the Defect at the
22 time of sale or lease, Ferranti and the Class Members would not have purchased or
23 leased the HP Printers or would have paid less for them. As a result of their
24 reliance on HP's omissions regarding the Defect, owners and/or lessees of the HP
25 Printers have suffered ascertainable loss of money, property, and/or loss in value of
26 their printers.

PARTIES

10. Plaintiff Vincent Ferranti is a resident of Maricopa County, Arizona. Ferranti is the former owner of an HP Printer which he obtained on or about March 25, 2009, and the current owner of an HP printer which he obtained on or about September 2009. Both printers were obtained primarily for personal, family, or household purposes, and were designed, manufactured, imported, distributed, sold, and/or leased by Defendant HP.

11. Defendant Hewlett-Packard Company is a California corporation. Upon information and belief, at all relevant times, HP has maintained its principal place of business at 3000 Hanover St., Palo Alto, CA 94304-1185. HP's registered agent for service in California is CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this class action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual Class Members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which Plaintiff and members of the class, on the one hand, and HP, on the other, are citizens of different states.

13. This Court has jurisdiction over HP because HP maintains its principal headquarters in California, is registered to conduct business in California, and has sufficient minimum contacts in California. HP intentionally avails itself of the California consumer market through the promotion, sale, marketing, and distribution of its products to California residents. As a result, jurisdiction in this court is proper and necessary. Moreover, HP's wrongful conduct, as described herein, emanates from California and foreseeably affects consumers in California and nationwide. Most, if not all, of the events complained of below occurred in or

1 emanated from HP's corporate headquarters located in Palo Alto, California.
2 Plaintiff's counsel's Declaration, as required under California Civil Code section
3 1780(d), is attached as Exhibit 1.

4 14. Venue is proper in this District under 28 U.S.C. § 1391 (a)-(c)
5 because, inter alia, substantial parts of the events or omissions giving rise to the
6 claim occurred in the District and/or a substantial part of property that is the subject
7 of the action is situated in the District.

8 **FACTUAL ALLEGATIONS**

9 15. HP designs, manufactures, distributes, and sells and/or leases the HP
10 Printers. On information and belief, HP has sold, directly or indirectly through
11 other retailers, thousands of HP Printers in California and nationwide.

12 16. The HP Printers are defective, including but not limited to the Defect
13 in the design and manufacture of the wireless function that causes it to cease
14 operating with normal use. The HP Printers are designed and/or manufactured in
15 such a way that the wireless function sporadically fails during normal use.

16 17. HP's advertisements and marketing representations fail to mention
17 that, because of the Defect, the HP Printers' wireless function will cease operating
18 with normal use during the printer's useful life.

19 18. Customers have reported the Defect to HP directly through HP's
20 warranty program and through published product reviews, such as those posted on
21 HP's support forum, Amazon.com, CNet.com, and similar websites. Thus HP
22 knew or should have known of the Defect since April 2009, if not before,
23 particularly due to the vast number of consumer-posted comments and complaints
24 regarding wireless connectivity issues on HP's Support Forum page, as well as the
25 high volume of returned and/or exchanged wireless printers from customers
26 complaining of wireless connectivity issues. The HP Support Forum page, which is
27 monitored by HP, would have alerted HP of the wireless connectivity issue.
28

1 19. The HP OfficeJet Pro 8500 Wireless was released in or around March
2 2009, designated as Model CB023A (the standard wireless model) and Model
3 CB025A (the Premier wireless model). The Premier model is essentially the same
4 as the standard model, but includes an additional paper tray and additional inkjet
5 cartridges (neither of which have any impact on the wireless function at issue in this
6 case).

7 20. Almost immediately, HP began receiving complaints regarding the
8 Defect.

9 21. For example, HP Support Forums has a section titled "Officejet 8500
10 pro Wireless problems" which as of June 27, 2013 has been viewed 20,558 times.

11 22. The first post in this category is dated April 19, 2009 (the month after
12 the printer was released) and states as follows:

13 dfword Registered: 04-19-2009 Message 1 of 19 (20,558 Views)
14 Officejet 8500 pro Wireless problems [Edited]
15 04-19-2009 03:03 AM - edited 04-19-2009 03:14 AM

16 This week I bought an HP pro 8500 wireless printer. I've never owned a
17 wireless printer before, so I actually read the instructions and before
18 installing the printer software, I ran the wireless wizard on the unit--entered
19 the 10-digit WEP, which was accepted. Then within seconds the printer
20 started to wig out. Cycles between "turn printer off and on", then after doing
21 so, get "Improper Shutdown", as if I didn't use the power button to turn it
22 off.

23 I'm running Windows Vista Premium SP1, and am using a 2wire 1800HG
24 modem/router with my ATT DSL--have a static IP, as my service was
25 installed up in 1999, back when you had to live within five miles of a
26 switching station. The connection is very stable, and as far as I know, only
27 one update was done to the unit (remotely by a ATT tech) when I upgraded
28 to PRO service.

 Same thing happens when I try to connect via ethernet. When I turn the
printer's radio off and connect via USB, it works fine, albeit wired. The
printer's network diagnostic printout says it can't locate the SSID.

 I'm dealing with HP support in India, and they have been OK, have had me
try all of the normal stuff (reset, not using power strip, etc), to no avail. Now

1 they are going to access my set remotely, hopefully this morning. Any ideas
2 what may be causing this? Could my router be incompatible?

3 23. On CNET's website, as of June 26, 2013, there were 261 user reviews
4 ranging from a high of 5 stars to a low of 1 star. 150 of the 261 reviews, or more
5 than 57%, gave the lowest possible 1-star rating and included comments like:

6 "Love the printer, hate connectivity issues"
7 on December 1, 2012 by Panther66
8 This puppy just won't stay connected to the network

9 24. On HP Support Forums' website, there are more than 150 posts on the
10 topic of "HP Officejet Pro 8500 Wireless A909g Loses Connectivity." Below are a
11 sampling of 18 of those messages ranging from October 2009 through March 2011:

12 (1) SLB Message 141 of 159, 03-24-2011 01:33 PM

13 Here we are in 2011, and same problem with the same HP response--
14 turn off sleep mode, firmware solution still not available, sending a
15 power adaptor to see if that works. Can't believe the years and they
16 still haven't fixed this. And yes, I loved this printer for the first 2-3
17 weeks. Then all the trouble started with locking up, never coming out
18 of sleep mode; having to unplug from the back and reboot, 2-3 times
19 per day just about. This is definitely NUTS! For all the hours TecSup
20 and we have spent over the years, they could have replaced them all
21 cheaper!

22 (2) CoinDoc Message 131 of 159, 01-29-2011 08:04 PM

23 It seems that all the troubleshooting is great but still seems to come
24 back to the same issue. The printer is losing its connectivity! We
25 know that it is happening with multiple systems, both 32 bit and 64
26 bit. . . . Well, we have now eliminated both the computer and the
27 router because both of them were functioning properly, and were
28 listening for the printer. The problem is definitely in the printer
because it is NOT sending a reinitiate connection sequence to the
router after it goes to sleep and then wakes up. But the real issue here
is: It should not have to! It should always maintain its wireless
connection even if the printer goes to sleep. So, that takes us right
back to the printer hardware/firmware and a definite design issue that
cannot be addressed by pointing their finger at the user or other
hardware.

BTW, I installed a Brother AIO on the same network about 11 months
ago, and it has NEVER had a connection issue! The HP 8500 has had

1 connectivity problems since the day it was installed about 18 months
2 ago.

3 I finally got so frustrated with my 8500 I turned off the wireless and
4 just set it up as a dedicated USB AIO printer. But, maybe some day,
5 will decide to give it another go to see if I can narrow the problem
6 down further.

7 I agree with all of you that this is a problem that shouldn't be
8 happening, especially with a company like HP.

9 (3) ToxicMan Message 121 of 159, 01-05-2011 07:59 PM

10 I just spent hours on the phone getting no where with HP once again,
11 and this time its because my printer is no longer in Warranty. I have a
12 case number on this issue that dates back to May 2010 and they now
13 refuse phone support because I'm out of warranty (19 days). There
14 was a patch released on 12/17 titled as follows:

15 » Windows 7 Critical Update to enhance reliability of network
16 connection 2010-12-17 , Version:1.0, 11.22M This update corrects an
17 issue which causes network-connected printers to disappear from the
18 system

19 When I attempt to install this update, I get an error that says:

20 "This update does not support any of the HP device drivers that you
21 have on your PC. You do not need this software update."

22 Interesting. The critical update for the A909g doesn't seem to apply
23 to the A909g I have.

24 Would like to know if anyone experiencing the fun I'm having has
25 tried this update and what was the result...

26 I'm getting very tired of turning off the printer and turning it back on
27 every time I want to print from my PC.

28 As always, my MAC is working fine...

(4) DonnaNY Message 129 of 159, 01-11-2011 08:12 AM

I loaded this fix but my A909g still loses connectivity about monthly.
So the fix doesn't work.

(5) ToxicMan Message 112 of 159, 12-01-2010 08:04 PM

LOL. So true! And the printer works flawlessly from my MAC! If I
want to print from windows, then I have to turn off the printer and
restart it. True. Problem is somewhere between HP and Microsoft.

Frustrating part is HP has release two specific patches for network
connectivity and its still not fixed. That's just unacceptable!

But at least of me, my move off Windows has been a blessing!
Everything just works on the MAC. It just works!

I'll keep following this but I have given up on HP and Microsoft. And
I'm not looking back.

(6) Airstreamyogi Message 113 of 159, 12-02-2010 10:43 AM

1 Mine doesn't respond to anything except unplugging it from the wall
2 and plugging it back in, which makes the printer scold me about never
3 doing that, and then adds an extra 5-10 minutes to my wait time while
4 it runs through diagnostics. I paid a premium for a wireless printer, so
advising us to use a cable sounds like a tacit acknowledgement that
the product isn't functioning as advertised, and just makes me want to
take this back to the store and get my money back.

5 (7) dwightlathan77 Message 115 of 159, 12-16-2010 02:25 AM

6 I have the same issues with 3 of my computers and the HP 8500. After
7 doing everything I know of I'm thinking its a software issue with the
8 driver. It only happens on my Vista computers, but not on my
9 HP/Vista machine and it is usually accompanied with the driver being
disabled on system startup.

10 HP's diagnostic utilities are of little use and either give feedback of
corrupt drivers or just freeze time and time again after reinstallation.
11 Right now their Network Diagnostics program can't get past the
network adapter's test. The odd thing is that when all HP's diagnostic
12 and printer software says the printer is disconnected, and I mean all of
it, I can usually see the printer in network explorer and access its
13 server's administration site across my LAN. I've never seen a time
when the router didn't recognize it. Even if the computer doesn't
14 recognize it at all the router still provides it an IP address.

15 HP, I'd love you to fix this, it has to be costing you a lot of money
with product returns and endless tech support.

16 (8) newportres Message 117 of 159, 12-17-2010 05:24 AM

17 This thread really is really depressing me. This is my new office
18 printer and I came here looking for answers to the connection issue.

19 I am using a USB connection so none of the wireless information
should be affecting me.

20 I am using XP pro so vista and 7 are not the issue. . . .

(9) jayunsplanet Message 101 of 159, 10-20-2010 09:15 AM

21 Well this was a depressing thread to read. I'm going on 6 hours of
22 trying to troubleshoot a similar issue.

23 We gave a user a new Windows 7 laptop and the issues haven't
stopped. They previously had a Windows XP laptop and we never had
an issue.

24 I have uninstalled/reinstalled the HP software a 1/2 dozen times.

25 This morning, I HAD the issue fixed. Used HP software for printing
and used Windows Fax & Scan for scanning.... then 30 minutes later,
26 the user called and said the printer wasn't printing. Sure enough, the
printer wasn't. Restarted, printer was gone. Couldn't reconnect/"Add
27 Device" like normal.

1 This is so frustrating. Doesn't help the user is thousands of miles
2 away working on a wireless connection. Thank God for LogMeIn and
being able to log in myself after the computer restarts 2 dozen times
after reinstalls of the HP software.

3 (10) RevJohnLeach Message 104 of 159, 11-18-2010 11:47 AM

4 Can i join in with this discussion? Had my 8500 A909g about 18
5 months with few minor probs,but now got new computer with Win 7
6 64bit. Just recently the printer has taken to spontaneously going
offline or losing connection. Lost count of how many times ive
7 uninstalled/reinstalled, patched etc. Ive now tried losing the wireless
and plugging ethernet into my router (Netgear DG834g). The really
8 frustrating thing is that the printer works sporadically, but will often
cancel a print job half way through printing and spit out half-blank
9 paper,particularly when im doing double-sided.

10 (11) MagicTH Message 92 of 159, 06-19-2010 01:14 PM

11 The reason I could not contact the printer after my Group Renewal
12 test was the printer picked up a dynamic IP address, even though it is
assigned a static IP address in the router. Why it did this is beyond
13 me. I can print, but I still cannot contact the printer, even with it's new
IP address.

14 So 5 more hours wasted today. \$100 printer. \$1500 trouble-shooting
time. Going printer shopping for a non HP printer.

15 (12) Lionika Message 93 of 159, 06-21-2010 10:52 AM

16 Hello, wow, I am so glad it wasn't just me. I am on my third 8500
17 and thank goodness I got it from Costco so I could return it whenever
I wanted to. I too have spent countless hours with HP chat techs and
18 by the time I got through with the last one I was fuming and ready to
swear at him. I wanted someone higher than him but he said there
19 was no other level then the one that I got. They tried everything, went
through my whole computer system and printer system. With this last
20 printer I have uninstalled it so many times, if my computer could talk,
it would be saying I'm an idiot and don't know what I want. I have
21 done the cycles, moved it to other parts of the house, connected
straight to my router, plugged it into just about every wall plug I could
22 find, but nothing worked. So I want to thank all of you for posting all
your problems, the solutions you have tried and confirmed that your
23 printer still doesn't work because now I know it's not me and I'm not
nuts! THANK YOU!

24 (13) Otha Message 97 of 159, 09-19-2010 03:49 AM

25 I have the same problem. I dis connect all computers and still can not
26 print.

27 (14) Horace1 Message 98 of 159, 09-19-2010 06:36 AM

As I have said before, I have been in contact with HP over this issue many times. I finally was referred to a higher support level, and the technician called me. After I explained that I had gotten to the point where my printer disconnected once or twice every week or two, he told me that was acceptable performance for wireless connectivity. In other words, what was I griping about. To me, this is an admission from HP that they either can't or won't pursue this problem. During this period, I have had 5 different computers with 3 different Operating Systems (XP, Vista, & Windows 7), and all of these systems have wireless connectivity to my Network, and have never lost this connectivity; only my HP printer??? I have also had 2 different wireless Network routers over this period, and both have performed the same. My printer is only 6 feet from my router with no obstruction between them, so in my opinion this issue rests solely with HP. For information purposes to other users, I have enabled automatic updating for my Windows OS's, and almost every time an update is installed, the printer loses connectivity. When I told HP this, they wanted to lay the blame at Microsoft's door, but I feel this just demonstrates that HP has a weakness in their wireless interface software/hardware.

(15) rlowsky, Message 100 of 159 09-24-2010 07:30 AM

I also am NOT using wireless!

8500 is configured for wired ethernet, static IP address, energy savings mode OFF, radio OFF

PC #1 works

PC #2 loses connectivity

Both PCs running XP

HP technicians have run extensive diagnostics but haven't found a resolution!

(16) TSkin, Message 81 of 159, 05-10-2010 08:03 AM

I've had the 7250 for 18 months and have had no issues up till a month or so ago. Now it's a nightmare. I only get between 12-15 mins before it drops. I have tried numerous solutions posted on the forums. I appreciate the advice on reconnecting with the wireless radio, that did work. I have monitored the frequency of drop and notice it's worse when there is a lot of wireless activity in the house. (Iphones and laptops connecting on and off). Anybody else know if this is involved with their issue? I would love to buy another printer to be done with this but have checked other alternatives to a wireless "All in ones" but have come with nothing else that offers the fax as well. Any ideas?

(17) PrintDoc Message 2 of 159(12,185 Views) 10-22-2009 12:46 PM

1 Unfortunately, you are not alone. Search the forums for this problem
 2 and you will find several threads....
 I am employed by HP

3 (18) Bob_Headrick Message 1 of 159 (12,197 Views) 10-22-2009
 4 12:01 PM

5 HP Officejet Pro 8500 Wireless A909g Loses Connectivity
 Problem with HP Officejet Pro 8500 Wireless A909g

6 New printer will not stay connected to the wireless network. The
 7 printer continuously drops the network connection.
 8 For 15-20 minutes at a time, it will go off-line, then come back on for
 ~5 mins. If you power off the printer it will re-connect. Energy
 9 Saving feature has been disabled.

10 . . . The fact that it works when it is on-line makes me believe
 everything with the network connection is fine, other than the
 11 possibility that there is a signal problem. But since other devices with
 b cards, connect to the router with no problem, and the printer reports
 12 a strong connection I do not believe this is the problem.
 I currently have a script running that pings the server every minute
 13 and it still disconnects.

14 Bob Headrick, Microsoft MVP Windows Expert - Consumer.

15 25. Notably, message number 17 above, was submitted by "PrintDoc" who
 16 lists himself as an employee of HP, and informs Mr. Headrick who began the topic:
 17 "Unfortunately, you are not alone. Search the forums for this problem and you will
 18 find several threads."

19 26. Amazon.com has 414 customer reviews of the printer, ranging from 1
 20 to 5 stars. Almost half of the ratings are the lowest rating, 1 star.

21 27. Consumer Reports has 108 customer ratings of the printer. The
 22 average rating is 1.5 stars. Sample complaints include the following:

23
 24 (1) too many headaches, by Mad art teacher from Westchester County,
 25 NY on 2/2/2011

26 We have owned this printer for about 18 months and have found it to be very
 27 unreliable. We use it on a daily basis for just basic document scanning and
 printing. Several times we've had to reinstall the software to our computers
 28

1 because it stopped recognizing the wireless signals. Paper Jams are frequent;
2 we cleared the most recent one but even with all the troubleshooting tips,
3 cleaning, resetting of the power and paper particle inspections we've done, it
4 refuses to operate. I am junking it and feel unsure as to whether to trust
another Hp printer...

5 (2) Very Frustrated With Performance, by Matthias from Salt Lake City,
6 UT on 12/16/2010

7 When we first purchased this printer, we were plenty happy with the
8 performance. It was a fairly simple set-up and it printed quickly and at a
fairly high quality.

9 Unfortunately, it has gone downhill fast the longer we owned it.

10 At first, it simply stopped connecting to the wireless network which was the
11 main reason we purchased it in the first place. Powering the printer off and
12 on solved the problem 50% of the time, but required that we pay full
attention to the printer for the duration of its hissy fit. I wanted a printer, not
another child.

13 Eventually, we had to give up and connect the computer using the USB,
14 which has worked sufficiently until the last two weeks when it has started
15 being finicky about printing even with a hard USB connection. I am now, as I
16 type, working on 30 minutes of trying to get a single page printed. To me,
this is unacceptable for a printer that I purchased specifically in order to free
me from having to muck around with my printer.

17 (3) do not buy if you go wireless, by timba from Clayton,NC on 10/12/2010

18
19 throwing it away no windows 7 hardware have to download it. goes into
20 sleep mode all the time have to unplug it to wake it up on/off button does not
work. Will not buy an HP again

21 (4) Never Worked/HP Cust Service Awful!, By Ron from Jupiter, FL on
22 9/6/2010

23 Unfortunately not likely to buy HP again. Product arrived but never worked
24 on wireless or via USB. Couldn't even get setup menu to work. Tried to
25 contact HP Service repeatedly but received no answer. Wrote an email to
26 CEO, received call from "special" customer service but they had no
27 flexibility to work with my normal work schedule. Failure of product and
28 failure of service. Have never seen anything so bad from a company that
once was good. Don't buy this product.

1 (5) Not worth the trouble, By rrws from Wenatchee, WA on 6/17/2010

2
3 Had to switch from wireless to USB hookup because the wireless was so
4 unreliable. Also, the fax was very unreliable. I had to refax pages everytime I
5 faxed. Easy return though because I bought it at [...].

6 (6) Absolute Disaster, By HP Lippincott. from Nashua, NH on 4/18/2010

7 Have only used this product for printing and some copying. Never got a
8 chance to use this for anything else. Also never got a chance to experience
9 anything good about it. . . . Wireless connection would disconnect
periodically.

10 28. In or around November 2011, HP released the HP OfficeJet Pro 8600
11 Wireless. Surprisingly, HP did not redesign the wireless function to repair the
12 Defect, but rather used the same defective wireless technology in the 8600 as it had
13 in the 8500.
14

15 29. Reviews on cnet.com for the HP OfficeJet Pro 8600 include the
16 following:
17

18 (1) HazeLyons Jun 16, 2013

19
20 Very disappointed with this printer and HP tech support which is the worst.
21 **Over the last month I have called HP no fewer than five times for the**
22 **same problem, the wireless connectivity.** It worked fine for the first four
23 months and then the problems started. The blue light blinks and won't
24 connect despite the fact that the router is only two feet way. I wasted hours
25 on the phone while they try to fix it. I have talked to at least five different
26 techs. One tech will tell me one thing and another will tell me another. **After**
27 **an hour on the phone they "fix" it only to have it malfunction again**
28 **within a few hours or when I turn it off.** The biggest thing they seem to
want to do is sell me an extended warrantee for "the employee discount" of
\$79 instead of \$99. How about just fix the problem? If you expect HP to
stand behind their product and replace this machine as it is obviously

1 malfunctioning guess again.....it hasn't happened to for me. This printer gets
2 two thumbs down from me as does HP Tech support.

3 (2) ladybug4331 Jun 4, 2013

4 This printer is nothing more than a \$280 paperweight. We're on the 4th or
5 5th warranty replacement. I've lost track. It's a lemon. I love all the
6 features if the blasted thing would work. For no apparent reason, the screen
7 flashes, and says "Printer Error" Turn unit off, then on. This happens
8 several times a day. The most replacement did it after only 10 minutes of
9 being installed. HP says I don't have enough "power" coming to the house
10 to run it. Oh yeah? We've run a flippin' camper off an outlet before. Are
11 they saying this requires more power than a camper? Why does our laptop,
12 desktops, microwave, etc. work just fine? HP is selling us a copout. We're
13 asking for a full refund. I give up on HP.

14 ladybug4331 Jun 4, 2013

15 Oh yeah... not to mention the fact that Scan to computer rarely works, it
16 **drops the network connection**, prints the edges only of a page
17 occasionally....JUNK!

18 (3) bjboyd Dec 23, 2012

19 I won't buy another HP all-in-one. I've now had two top-of-the-line HP
20 printers, and both **gave me no end of fits with their wireless connectivity**.
21 One is now linked to router via ethernet because it still works fine except the
22 wireless is broken. The other, an 8500 A909g, drops from the network
23 repeatedly, apparently -- from reading blogs -- an inability to reconnect from
24 sleep mode.

25 (4) corenotions Nov 19, 2012

26 To sum it up poorly built, software is horrible, **doesn't stay connected**,
27 drivers all out of date and required patches or plug-ins, prints then sucks
28 paper back into it for double sided printing even if not set to it. ePrint is
useless.

They took about Zero time to engineer this machine and I should know as I
am one. If you own a MAC stay away as HP is so pro PC they probably

1 sabotage this on purpose. Where the editors at CNET are getting this is the
2 best printer, makes me question their expertise.

3 30. Amazon.com includes the following reviews for the OfficeJet Pro
4 8600 Wireless :

5 (1) 1.0 out of 5 stars

6 Incredible problem dropping network connections, February 11, 2012

7 By Nan Ratner -

8 This model has **incredible glitches that cause it to drop network**
9 **connections constantly**, and the only sure fix is to keep rebooting your
10 entire system,

11 (2) 1.0 out of 5 stars

12 Grueling experience, thanks to the touch screen, March 5, 2012

13 By Joe Smith "Mystery Shopper" (Atlanta, GA)

14 **Wireless network connection... ah that would have been nice, seeing that**
15 **it is a wireless-capable printer. But no, we were unable to connect to the**
16 **wireless network**, unlike all the other devices (laptops, phones and more)
that easily connected.

17 (3) 1.0 out of 5 stars

18 Nothing but problems, December 16, 2011

19 By Kirsten Dumford

20 I have been using HP all-in-one products for the past 9 years with good
21 results, but was wary when I had to replace mine with the 8600 model
22 because of poor reviews in Consumer Reports. I have had nothing but
23 problems with my new 8600 model. **I have literally spent 6 hours with tech**
24 **support maintaining the connection between my computer and the**
25 **printer**, and needed additional help for the printer to print photos, and use
the scanner. I have had trouble in so many different areas of using this model
that I am ready to give up on it and try another brand.

26 (4) 1.0 out of 5 stars

27 Do not buy if you run Windows XP, February 20, 2012

28 By Nick -

1 The fine print failed to mention that this printer DOES NOT WORK when
2 running windows XP on a network. Finally, **after several agonizing days of**
3 **sudden ‘cannot find printer on network’ error messages** (and
4 (interestingly) no obvious way to contact HP for support, I finally found a
5 “fix” burrowed down deep in HP (so-called) ‘support’ site that has to do with
6 print cartridge alerts and the need to disable “scan to computer”. We’ll see. If
7 I get the error again, this sucker goes back (or may be found smashed in the
8 street).

9 (5) 1.0 out of 5 stars

10 Printer not found, July 20, 2012

11 By D. A. Yarnold “Alamodave” (Alamo, CA, US)

12 Incredibly frustrating. After uninstalling and reinstalling the printer, **it works**
13 **on the network briefly. Then it drops the network...so you can see the**
14 **printer on the network, but when you go to print it tells you the printer**
15 **is not connected. I’ve tried to fix and redo dozens of times...to no**
16 **avail...same result. Sooooo frustrating. Should be a good printer, but**
17 **clearly the connectivity issue (noted by a bunch of other reviewers)**
18 **stinks.**

19 Realized I wouldn’t be able to make this work about 32 days after it was
20 delivered, so now I’m stuck with it.

21 (6) 1.0 out of 5 stars

22 THIS PRINTER SUCKS!!! TOTAL WASTE OF MONEY!!, June 10, 2013

23 By Tina Willis

24 This printer simply does not print unless you have a certain type of router
25 (our router is Netgear, fairly new, and the printer does not work). **The**
26 **printer worked for a while then the router apparently scrambles the**
27 **channel or something, so we cannot print.** The router cannot be changed. I
28 don’t know what type of router will work, but this printer completely sucks.
We spent more than this price less than a month ago and have gone through
endless troubleshooting (we also purchased a warranty--complete waste also--
zero help). So we are now literally throwing this in the trash and I’m back
on amazon looking for a printer that will actually print. Total waste of our
money and they do not tell you that you need a special kind of router when
you are buying (and I don’t even know how you would know what kind of

1 router--our router is a standard, new router we purchased from Best Buy and
2 have never had any problems with it before this stupid printer).

3 Stay away if you don't want to waste your money!! HP sucks!!!!

4
5 (7) 1.0 out of 5 stars totally unreliable, April 17, 2013
6 By T. Nicholas Kypreos (Gainesville, FL)

7 This thing is nothing but frustration. You fight each time to perform the
8 simplest task and **it rewards you by randomly losing connectivity.**

9
10 (8) 1.0 out of 5 stars, July 15, 2012
11 By Jane E. Fratesi "Doberman Lover" (Atlanta, GA)

12 I purchased this printer to replace an HP Photosmart when it stopped
13 working. As many problems as the old printer had, I wish I still had it.

14 This printer was difficult to set up. **It took many tries before getting it**
15 **connected to my wireless network. I am still unable to use the ePrint**
16 **functionality. Whenever I try to use it, I get the message "the printer**
17 **could not connect to the server"**. I have not called support about this. I
18 spent very much time on the phone with them just trying to get the printer set
19 up, and I needed a break.

20 (9) 1.0 out of 5 stars Buggy as buggy can be, June 18, 2013
21 By Robson C. Cozendey –

22 HP used to be a nice brand, but so far it is the worst for me. This printer is
23 buggy in many different levels. Printer error messages happens a lot of time,
24 **the network connection keeps dropping every time**, the papers keep
25 getting stuck together in the tray, so you have to manually separate them. I
26 contacted support and had no response in more than a week. After that, I just
27 got an automated message that they're looking after it. And I'm looking for
28 another printer, not from HP of course.

31. HP actively concealed the Defect from Ferranti and the Class
Members at the time of purchase, lease, or repair and thereafter. Specifically, HP:

- a. Failed to disclose and/or actively concealed at the time of purchase, lease, or repair and thereafter that the HP Printers were defective and would develop wireless function defect with normal use, despite the fact that HP learned of the Defect in April 2009, if not before;
- b. Failed to disclose and/or actively concealed, at the time of purchase, lease, or repair and thereafter, any and all known material defects in the HP Printers, including the Defect and, among others, the outrageous repair costs for failure of the wireless function that should have been covered under warranty;
- c. Failed to disclose and/or actively concealed, at the time of purchase, lease, or repair and thereafter, that because of the HP Printers' defective design and/or manufacture, customers would continue to experience failure of the wireless function problems with normal use even after attempting the various work-arounds suggested by HP.

32. The HP Printers come with HP's Limited Warranty (the "Warranty"), warranting that the product is free from defects in materials and workmanship and covers defects that arise as a result of normal use of the product and excludes problems that arise from improper maintenance or modification; unsupported software, media, parts or supplies; operation outside the product's specifications; or unauthorized modification or misuse.

33. Under the Warranty, HP agrees to repair or replace the product or refund the purchase price.

34. Despite the fact that the failure of the wireless function is caused by the Defect and is not the result of any of the excluded causes, HP routinely refuses to (a) properly repair customers' HP Printers under the Warranty, (b) replace the

1 defective HP Printer with a non-defective printer, or (c) refund the purchase price.
2 HP fails to disclose to customers that the failure of the wireless function is caused
3 by the HP Printers' defective design and/or manufacture.

4 35. The HP Printers all share this same Defect. Because of the Defect, the
5 HP Printers are substantially certain to malfunction during the printers' useful life.
6 The failure of the wireless function results from normal use and is not the result of
7 any excluded cause.

8 36. When HP fails to honor its warranty, it fails to disclose that the
9 malfunctions of the HP Printers' wireless function are the result of the Defect. HP
10 refuses to refund the purchase price, instead giving customers troubleshooting tips
11 that do not address the root cause of the Defect and, at best, constitute temporary
12 work-arounds, or providing a replacement printer that contains the same Defect.

13 **PLAINTIFF VINCENT FERRANTI**

14 37. On March 25, 2009 Ferranti obtained a defective HP Printer in
15 exchange for a defective HP printer. At that time, HP failed to disclose and actively
16 concealed *that the printer's wireless function was defective and would fail with*
17 *normal use*. If Ferranti had known of the Defect, he would not have purchased the
18 printer or would have paid less for it.

19 38. Less than six months later, on September 27, 2009, Ferranti exchanged
20 his defective HP Officejet Pro 8500 Wireless All-in-one printer (model CB023A,
21 serial MY91J21015) for the same model at OfficeMax (model CB023A, serial
22 CN02M6R10F). Again, HP failed to disclose and actively concealed *that the*
23 *printer's wireless function was defective and would fail with normal use*. If
24 Ferranti had known that the new printer suffered from the same Defecct as the old
25 one, he would not have exchanged his old printer for the new one or would have
26 paid less for it.
27
28

1 39. Each time Ferranti obtained an HP printer, either through purchase,
2 exchange, or replacement, he received HP's standard warranty. At no time did HP
3 disclose that the printer's wireless function was defective and would fail with
4 normal use.

5 40. Ferranti contacted HP via its Tech Support department multiple times
6 to notify HP of the defect and request repair or replacement (including April 2010,
7 November 2010, July 2011, January 2012, January 2013, April 2013, and May
8 2013).

9 41. HP was never able to repair the Defect. Instead, HP offered temporary
10 resolutions which failed to repair the Defect, including uninstalling and reinstalling
11 software, downloading and installing firmware updates or patches, restarting the
12 computer, restarting the wireless router, restarting the printer, downloading and
13 installing HP diagnostic tools to help identify and fix issues, inputting wireless
14 router settings into the LCD panel on the printer, disabling "energy save mode" on
15 printer, and changing the setup of the standard IP address to be "static" rather than
16 dynamic.

17 42. During one call Ferranti had with an HP Tech support agent, after the
18 agent went through the process of uninstalling and reinstalling software, and
19 applying patches and updates, the agent admitted that the malfunctions were being
20 caused by a hardware defect, specifically a defect on the radio button's wireless
21 functionality, which defect would continue to be a problem and would continue to
22 get worse. She then offered a discount off a new printer, but never offered a full
23 refund as required by the Warranty in situations where HP is unable to repair or
24 replace a defective printer. Within a couple of weeks of the HP Tech support
25 agent's attempt to repair Ferranti's printer, wireless connectivity was not working
26 again and the printer was unable to print or scan. HP was never able to provide a
27

1 proper repair for the Defect, resulting in repeated malfunctions throughout the
2 warranty period.

3 43. Other than one agent's candid admission (which other HP
4 representatives denied), HP failed to advise Ferranti that the wireless defect was a
5 result of the HP Printer's defective design and/or manufacture.

6 44. Ferranti contacted HP, the California Attorney General, the Better
7 Business Bureau, and the FTC Bureau of Consumer Protection in an attempt to
8 persuade HP to honor the terms of the Warranty, all to no avail.

9 45. HP persisted in its refusal to acknowledge that the printer had a defect
10 and that its suggestions did not properly repair it.

11 **CLASS ACTION ALLEGATIONS**

12 46. Ferranti brings this action on behalf of himself and as representative of
13 the following class (the "Class") and subclass ("Subclass A") initially defined as:
14

15 Class: All persons and entities in the United States (including its
16 Territories and the District of Columbia) who currently own or lease or
17 formerly owned or leased an HP Officejet Pro 8500 or 8600 Wireless
All-in-one printer.

18 Subclass A: All Class Members who notified HP of the Defect during
19 the term of the Warranty.

20 Excluded from the Class are: (1) HP, its subsidiaries, and its legal representatives,
21 officers, directors, assigns, and successors; and (2) all federal court judges who may
22 preside over this case, their staff, and their immediate family members.

23 47. This action has been brought and may properly be maintained pursuant
24 to the provisions of the Code of Civil Procedure § 382 and Civil Code § 1750 *et*
25 *seq.*, because, among other things, HP's acts and practices as complained of herein
26 emanated from California and Defendant conducts substantial business in
27 California.
28

1 48. **Ascertainability.** The Class and Subclasses are objectively, technical
2 support requests, defined so that the members of the Class are ascertainable by
3 reference to HP's records of purchasers and/or lessees of its printers, and HP's
4 records of complaints and repair service requests regarding the defect in the
5 wireless function, as well as Class Members' physical evidence.

6 49. **Numerosity. FED. R. CIV. P. 23(a)(1).** Ferranti does not know the
7 exact size of the Class and Subclass A. Because thousands of people in the United
8 States have purchased or leased a HP Printer, Ferranti believes the Class and
9 Subclass Members are so numerous and geographically dispersed as to render
10 joinder of all Class or Subclass Members impracticable. The number of Class and
11 Subclass Members and their identities and addresses can be readily ascertained
12 from HP's records and Class Members' physical evidence. Class Members may be
13 notified of this action by first-class mail, supplemented, if the Court deems
14 appropriate, by published notice.

15 50. **Existence and Predominance of Common Questions of Fact and**
16 **Law. FED. R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all
17 members of the Class and Subclasses. These questions predominate over the
18 questions affecting only individual Class Members. These common legal and
19 factual questions include:

- 20 a. Whether HP designed, manufactured, marketed, sold and/or
21 leased HP Printer printers that are defective;
- 22 b. Whether HP's Warranty covers the wireless function's failure;
- 23 c. Whether HP's refusal to adequately repair the printers in such a
24 manner as to restore the wireless function breaches the
25 Warranty;
- 26 d. Whether HP knew of the Defect and, if so, how long HP has
27 known of the Defect;

- 1 e. Whether HP reasonably should have known of the Defect before
2 it sold the HP Printers to Ferranti and the Class Members;
- 3 f. Whether HP had a duty to disclose the defective nature of the
4 HP Printers to Ferranti and the Class Members;
- 5 g. Whether HP failed to disclose or concealed material information
6 concerning the Defect;
- 7 h. Whether HP's conduct and business practices violate the
8 Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750 *et*
9 *seq.*;
- 10 i. Whether HP's conduct and business practices violate the Unfair
11 Competition Law ("UCL"), Business & Professions Code §
12 17200 *et seq.*;
- 13 j. Whether Ferranti and the Class Members are entitled to relief,
14 and the amount and nature of such relief, including relief in the
15 form of an injunction and/or restitution.

16 51. **Typicality. FED. R. CIV. P. 23(a)(3).** Ferranti's claim is typical of
17 those of other Class and Subclass Members. Ferranti and all members of the Class
18 have been damaged by the same wrongful conduct by HP. Like the other Class
19 Members, Ferranti purchased and/or leased a defective HP Printer.

20 52. **Adequacy. FED. R. CIV. P. 23(a)(4).** Ferranti is an adequate
21 representative of the Class and Subclasses because his interests do not conflict with
22 those of the Class or Subclass Members. Ferranti has retained competent counsel
23 experienced in complex class action litigation. Ferranti intends to prosecute this
24 action vigorously and protect the interests of the Class and Subclasses. Ferranti and
25 his counsel will fairly and adequately protect the Class Members' interests.

26 53. **Superiority. FED. R. CIV. P. 23(b)(3).** Questions of law and fact
27 predominate over questions affecting only individual members of the Class and
28

1 Subclasses, and a class action is superior to other available methods for fair and
2 efficient adjudication of this controversy. The issues in this litigation include only
3 HP's design, manufacturing, marketing, sale and/or lease of defective HP Printers
4 and do not include any other potential individual disputes between putative Class
5 Members and HP. The damages suffered by each Class Member are such that
6 individual prosecution would prove burdensome and expensive for the Class
7 Members and the court system. Individualized litigation would increase the delay
8 and expense to all parties and the court system and present a potential for
9 inconsistent or contradictory judgments. By contrast, class action litigation
10 presents fewer management difficulties and provides the benefits of single
11 adjudication, economy of scale, and comprehensive supervision by a single court.

12 **FIRST CAUSE OF ACTION**
13 **(Violation of the Consumers Legal Remedies Act,**
14 **CAL. CIV. CODE § 1750, *et seq.*)**

15 54. Ferranti incorporates by reference and realleges all of the preceding
16 paragraphs.

17 55. Ferranti brings this cause of action on behalf of himself and on behalf
18 of the Class against HP.

19 56. HP is a "person" within the meaning of Civil Code §§ 1761(d) and
20 1770, and it provides "goods" within the meaning of Civil Code §§ 1761(a) and
21 1770.

22 57. Ferranti and the Class Members are "consumers" who purchased
23 and/or leased a HP Printer for business purposes and personal, family, or household
24 purposes within the meaning of California Civil Code §§ 1761(d) and 1770.
25 Ferranti's and each Class Member's purchase or lease of an HP printer constitutes a
26 "transaction" within the meaning of Civil Code §§ 1761(e) and 1770.

27 58. By failing to disclose and concealing the defective nature of the HP
28 Printers from Ferranti and the Class Members, HP violated California Civil Code §

1 1770(a), as it represented that the HP Printers had characteristics and benefits they
2 do not have and represented that the HP Printers were of a particular standard,
3 quality, or grade when they were of another. *See* CAL. CIV. CODE §§ 1770(a)(5) &
4 (7).

5 59. HP has engaged in business practices that violate the CLRA including,
6 without limitation, failing to disclose or concealing that the HP Printers were
7 manufactured with a Defect. HP's unfair and deceptive acts or practices occurred
8 repeatedly in HP's trade or business and were capable of deceiving a substantial
9 portion of the purchasing public.

10 60. HP knew that the HP Printers were defective and that they would
11 develop the wireless function defect from normal use.

12 61. HP has a duty to Ferranti and the Class Members to disclose the
13 defective nature of the HP Printers because:

- 14 a. HP was in a superior position to know the true state of facts
15 about the Defect;
- 16 b. Ferranti and the Class Members could not reasonably have been
17 expected to learn or discover that the HP Printers were defective
18 until they experienced the wireless function's failure; and
- 19 c. HP knew that Ferranti and the Class Members could not
20 reasonably have been expected to learn about or discover the
21 Defect.

22 62. By failing to disclose the Defect, HP has knowingly and intentionally
23 concealed material facts and breached its duty not to do so.

24 63. The facts concealed or not disclosed by HP to Ferranti and the Class
25 Members are material because a reasonable consumer would have considered them
26 to be important in deciding whether or not to purchase the HP Printers, or to pay
27 less for them. Had Ferranti and the Class Members known that the HP Printers
28

1 were defective, they would not have purchased the HP Printers or would have paid
2 less for them.

3 64. Ferranti and the Class Members are reasonable consumers who do not
4 expect their printers' wireless function to cease operating with normal use. That is
5 the reasonable and objective consumer expectation for wireless printers.

6 65. As a result of HP's acts and practices alleged herein, Ferranti and the
7 Class Members suffered actual damages in that their printers are defective in a way
8 that causes the printers' wireless function to cease operating with normal use. As a
9 direct and proximate result of HP's unfair or deceptive acts or practices, Ferranti
10 and the Class Members have suffered and will continue to suffer actual damages.

11 66. Ferranti and the Class Members are entitled to equitable relief.

12 67. Ferranti has provided HP with notice of its alleged violations of the
13 CLRA pursuant to California Civil Code § 1782(a). If, within 30 days of the date
14 of the notification letter, HP fails to provide appropriate relief for its violation of the
15 CLRA, Ferranti will amend this Complaint to seek monetary, compensatory, and
16 punitive damages, in addition to the injunctive and equitable relief that Plaintiff
17 seeks now.

18 **SECOND CAUSE OF ACTION**

19 **(For unlawful, unfair, and fraudulent business practices under** 20 **California Business and Professions Code § 17200 *et seq.*)**

21 68. Ferranti incorporates by reference and realleges all of the preceding
22 paragraphs.

23 69. Ferranti brings this cause of action on behalf of himself and on behalf
24 of the Class against HP.

25 70. HP knew the HP Printers were defectively designed and/or
26 manufactured and that the printers' wireless function would cease operating with
27 normal use.

1 71. In failing to disclose the Defect, HP has knowingly and intentionally
2 concealed material facts and breached its duty not to do so.

3 72. HP was under a duty to Ferranti and the Class Members to disclose the
4 defective nature of the HP Printers because:

- 5 a. HP was in a superior position to know the true state of facts
6 about the Defect;
- 7 b. HP made partial disclosures about the quality of the HP Printers
8 without revealing the defective nature of the HP Printers and the
9 fact that the printer would develop the wireless function defect
10 with normal use;
- 11 c. HP actively concealed the defective nature of the HP Printers
12 from Ferranti and the Class Members.
- 13 d. HP knew that Ferranti and the Class Members could not
14 reasonably have been expected to learn about or discover the
15 Defect.

16 73. The facts concealed or not disclosed by HP to Ferranti and the Class
17 Members are material because a reasonable person would have considered them to
18 be important in deciding whether or not to purchase HP's HP Printers, or to pay less
19 for them. Had Ferranti and the Class Members known that the HP Printers suffered
20 from the Defect described in this Complaint, they would not have purchased the HP
21 Printers or would have paid less for them.

22 74. HP continued to conceal the defective nature of the HP Printers even
23 after Class Members began to report problems. Indeed, HP continues to cover up
24 and conceal the true nature of the problem and deny valid warranty claims.

25 75. By this conduct, HP has engaged in unfair competition and unlawful,
26 unfair, and fraudulent business practices.

1 76. HP's unfair or deceptive acts or practices occurred repeatedly in HP's
2 trade or business and were capable of deceiving a substantial portion of the
3 purchasing public.

4 77. As a direct and proximate result of HP's unfair and deceptive
5 practices, Ferranti and the Class Members have suffered and will continue to suffer
6 actual damages.

7 78. HP has been unjustly enriched and should be required to make
8 restitution to Ferranti and the Class Members pursuant to §§ 17203 and 17204 of
9 the Business & Professions Code.

10 **THIRD CAUSE OF ACTION**
11 **(For Breach of Express Warranty under the Magnuson-Moss Warranty Act,**
12 **15 U.S.C. § 2301 et seq.)**

13 79. Ferranti incorporates by reference the allegations contained in the
14 preceding paragraphs of this Complaint.

15 80. Ferranti brings this action on behalf of himself and on behalf of the
16 Class against HP.

17 81. Ferranti and the Class Members are "consumers" within the meaning
18 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

19 82. HP is a "supplier" and "warrantor" within the meaning of 15 U.S.C. §§
20 2301(4)-(5).

21 83. The HP Printers are "consumer products" within the meaning of 15
22 U.S.C. § 2301(1).

23 84. HP's Warranty is a "written warranty" within the meaning of 15
24 U.S.C. § 2301(6).

25 85. HP breached the Warranty by:

- 26 a. Extending a one-year limited warranty with the purchase or
27 lease of the HP Printers, thereby warranting to repair or replace
28

1 printers defective in material or workmanship at no cost to the
2 owner or lessee;

3 b. Selling and leasing the HP Printers with defective design and/or
4 manufacture such that the printers would experience the wireless
5 function defect with normal use, requiring repair or replacement
6 within the warranty period;

7 c. Refusing to honor the express warranty by refusing to properly
8 repair or replace the printers with properly functioning printers,
9 instead suggesting only software “work-arounds” which failed
10 to repair the defect; and

11 d. Refusing to honor the express warranty by repairing or replacing
12 the printers with non-defective parts.

13 86. HP’s breach of the express warranty deprived Ferranti and the Class
14 Members of the benefits of their bargains.

15 87. The amount in controversy of Ferranti’s individual claim meets or
16 exceeds the sum or value of \$25. In addition, the amount in controversy meets or
17 exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on
18 the basis of all claims to be determined in this suit.

19 88. HP has been afforded a reasonable opportunity to cure its breach of
20 written warranty, including when Ferranti and the Class Members notified HP of
21 the defect and requested a proper repair.

22 89. As a direct and proximate result of HP’s breach of written warranty,
23 Ferranti and the Class Members sustained damages and other losses in an amount to
24 be determined at trial. HP’s conduct damaged Ferranti and the Class Members,
25 who are entitled to recover damages, consequential damages, specific performance,
26 diminution in value, costs, attorneys’ fees, rescission, and/or other relief as
27 appropriate.

**FIFTH CAUSE OF ACTION
(For Breach of Express Warranty)**

90. Ferranti incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

91. Ferranti brings this action on behalf of himself and on behalf of the Class against HP.

92. HP warranted that each HP Printer was free of defects when it sold the printers to Ferranti and the Class Members as described in this Complaint. Under the terms of HP's Warranty, each HP Printer came with an express Warranty that warrants that the printer will be free from defects in materials and workmanship under normal use during the warranty period.

93. This Warranty became part of the basis of the bargain. Accordingly, HP's Warranty is an express warranty.

94. HP breached the express warranty by:

- a. Extending a one-year limited warranty with the purchase or lease of the HP Printers, thereby warranting to repair or replace printers defective in material or workmanship at no cost to the owner or lessee;
- b. Selling and leasing the HP Printers with defective design and/or manufacture such that the printers would develop the wireless function defect with normal use, requiring repair or replacement within the warranty period;
- c. Refusing to honor the express warranty by repairing or replacing the Printers free of charge, instead suggesting only software "work-arounds" which failed to repair the defect; and
- d. Refusing to honor the express warranty by repairing or replacing the Printers with non-defective parts.

1 95. Ferranti provided HP with timely notice of its breach of warranty. HP
2 was also on notice of the Defect from the complaints and service requests it
3 received from Class Members, internet message boards and support forums
4 maintained by HP, including www8.hp.com/us/en/supportforums.html, and from
5 published product reviews.

6 96. As a direct and proximate result of HP's breach of warranty, Ferranti
7 and each of the Class Members have suffered damages and continue to suffer
8 damages, including economic damages at the point of sale or lease, *i.e.*, the
9 difference between the value of the HP Printers as promised and the value of the
10 printers as delivered. Additionally, Ferranti and the Class Members either have
11 incurred or will incur economic damages at the point of repair in the form of the
12 cost of repair and/or the cost of purchasing a nondefective printer to replace the HP
13 Printer.

14 97. Ferranti and the Class Members are entitled to legal and equitable
15 relief against HP, including damages, consequential damages, specific performance,
16 rescission, attorneys' fees, costs of suit, and other relief as appropriate.

17 **DAMAGES AND OTHER RELIEF**

18 98. HP's acts and omissions were a proximate and producing cause of
19 damages to Ferranti and each Class Member. Class Members have sustained
20 financial losses associated with their purchase and/or lease of a defective printer
21 including repair costs, shipping charges, loss of use, diminished value, and other
22 losses. At this time, Ferranti seeks damages on behalf of the Class and equitable
23 relief as previously alleged in this Complaint.

24 99. Ferranti and the Class Members seek their reasonable and necessary
25 attorneys' fees and costs incurred in connection with this suit.

26 100. Ferranti and the Class Members seek pre-judgment and post-judgment
27 interest, at the highest rates allowed by law, on the damages awarded.
28

CONDITIONS PRECEDENT

101. All conditions precedent to recovery have been performed or have occurred.

PRAYER FOR RELIEF

WHEREFORE, Ferranti, on his own behalf and on behalf of the Class, prays for judgment ordering relief as follows:

- a. certifying the Class and Subclasses and appointing Ferranti and his counsel to represent the Class and Subclasses;
- b. declaring that HP is financially responsible for notifying all Class Members about the Defect;
- c. enjoining HP from further deceptive distribution, sales, and lease practices with respect to the HP Printers;
- d. awarding Ferranti and the members of the Class actual damages, consequential damages, specific performance, and/or rescission, except that for now, Plaintiffs seek only equitable and injunctive relief with respect to their claims under California's Consumer Legal Remedies Act, California Civil Code section 1750 *et seq.*;
- e. directing HP to repair and/or replace all defective HP Printers at no cost to the Class Members;
- f. declaring that HP must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of the HP Printers and from repairs of the HP Printers that should have been covered under the Warranty, or make full restitution to Ferranti and the Class;
- g. awarding Plaintiffs and the members of the Class pre-judgment and post-judgment interest;

- 1 h. awarding Plaintiffs and the members of the Class reasonable
- 2 attorneys' fees and costs of suit, including expert witness fees,
- 3 pursuant to California Code of Civil Procedure § 1021.5, the
- 4 common fund theory, or any other applicable statute, theory, or
- 5 contract;
- 6 i. granting leave to amend the Complaint to conform to the
- 7 evidence produced at trial; and
- 8 j. awarding such other and further relief as this Court may deem
- 9 just and proper.

DEMAND FOR JURY TRIAL

102. Pursuant to Federal Rule of Civil Procedure 38(b), Ferranti demands a trial by jury on all claims so triable.

Dated: August 20, 2013

Respectfully submitted,

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